IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:: J U D G M E N T ::

S.B. CRIMINAL APPEAL NO.322/1988
(State of Rajasthan Vs. Dhobe Khan & Ors.)

S.B. CRIMINAL APPEAL AGAINST THE JUDGMENT DATED 28.10.1987 PASSED BY THE LEARNED ADDITIONAL DISTRICT AND SESSIONS JUDGE, BARMER IN SESSIONS CASE NO.85/87.

DATE OF JUDGMENT : 21th November, 2007

P R E S E N T

HON'BLE MR. JUSTICE DEO NARAYAN THANVI

Mr. JPS Choudhary, Public Prosecutor.
Mr. Vijay Bishnoi,
Mr. Doongar Singh, for the accused respondents.

BY THE COURT :

1. This State Appeal is directed against the judgment & order dated 28.10.1987 passed by the learned Additional District &

Sessions Judge, Barmer in Sessions Case No.85/87, whereby, he acquitted the accused respondents for offence under Section 21 of the N.D.P.S. Act (hereinafter referred to as the Act). Charges against the accused respondents were that on 19.2.87 at about 3 pm, heroine measuring one kilo and seventy gms was recovered from the possession of accused respondent Basan, which he kept in his possession without licence and purchased it from accused Kamal and Dhobe Khan and sold it to accused Bhera in exchange of one tape recorder. All the accused were charged for offence under Section 21 of the Act, to which they pleaded not guilty. Prosecution examined 11 witnesses. Statements of the accused respondents were recorded under Section 313 Cr.P.C. They led no evidence in defence. After hearing the arguments, the learned trial court came to the conclusion that no case for conviction is made out and he passed the order of acquittal.

2. Learned Public Prosecutor has submitted that the judgment of the learned trial court is contrary to the record as there was ample evidence of the police officers, who caught hold of the accused on the spot while he was running on seeing the police officers and recovered heroine, which he purchased from accused Kamal and Dhobe Khan and sold it to accused Bhera, therefore, all the accused respondents should be convicted.

3. On the contrary, learned counsel for the accused respondents have supported the judgment of the learned trial court. It is submitted by the learned counsel that appeal against accused respondent Kamal has already been abated by the order of this Court dated 7.5.2007.

4. It is alleged by the prosecution that on 19.2.87, when Dy. Superintendent of Police, Barmer investigating the case, he got information that some smuggled articles are being brought from Bachhdau to Gujarat. Upon this, the SHO Dhorimanna went at Bachhdau and he along with Dy. Superintendent of Police, Barmer came to know from secret information that accused respondent Basan resident of Bamnor is doing smuggling of heroine, which is having in his possession and is trying to sell it out. Police party reached at the dhani of accused respondent Basan. On seeing the police party, accused respondent Basan ran away. Police followed him for about one kilometer and recovered heroine vide Ex.P-6 and deposited the same to the department of Customs by obtaining sample of 30 gms. Sample was sealed and sent for chemical examination. After receiving the report of chemical examination, the challan was filed against the accused respondents.

5. From the perusal of the evidence on record, it appears that

the recovered article i.e. heroine was not produced in the court. When recovered article has not been produced in the court and on the contrary it was handed over to the department of Customs, this is in contravention of Section 55 of the Act, which says that an officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station. The learned trial court has rightly held that non producing of the recovered article has created doubt in the story of the prosecution.

6. All the independent witnesses of recovery have turned hostile. The prosecution has mainly relied upon the evidence of police officers i.e. PW-8 Chatar Singh, PW-10 Bhanwar Singh and PW-11 Govind Narayan. There are major contradictions in the statements of these three police officers regarding distance from where the accused was caught, who caught the accused and what was the location of the dhani of accused respondent Basan. PW-11 Govind Narayan has said that he caught hold of accused

with a distance of 20 to 25 steps, whereas, PW-8 Catar Singh has said that he caught hold of accused respondent at a distance of one mile and PW-10 Bhanwar Singh has said that accused was followed with a jeep at a distance of 50 to 60 steps. PW-8 Catar Singh has said that accused Basan was caught hold of by Nimbdan but the other officers said that they caught hold of accused respondent Basan. Likewise, the gate of the dhani was on the eastern side or on the northern side is also disputed.

7. While relying upon these contradictions and un-corroboration in the testimony of the police officers, the learned trial Judge came to the conclusion that the prosecution story regarding recovery of heroine from the possession of accused respondent Basan is doubtful. Rest of the motbirs of recovery namely Shanker Lal and Teekama Ram have turned hostile.

8. So far as other accused respondents are concerned, it is said that respondent Basan purchased this heroine from accused Dhobe Khan and Kamal but there is no oral or documentary evidence in this regard as to how and when it was sold to accused respondent Basan. Likewise, there is also no evidence that accused respondent Basan sold the heroine to accused respondent Bhera. Likewise, there is also no evidence that accused respondent Basan sold the heroine to accused

respondent Bhera.

9. In addition to other infirmities, there is also non compliance of Sections 42 and 57 of the Act as no report was furnished to the superior officers.

10 Consequently, the judgment dated 28.10.1987 passed by the learned Additional District & Sessions Judge, Barmer, acquitting the accused respondents calls for no interference. The appeal filed by the State is dismissed. Accused respondents are on bail in this appeal. Their bail bonds stands cancelled.

(DEO NARAYAN THANVI), J.

ms rathore